



An
Bord
Pleanála

Inspector's Report ABP-318368-23

Type of Appeal

Appeal against a Section 18 Demand for Payment

Location

Lands west of the R121 Church Road, Kilmartin, Tyrrelstown, townland of Hollystown, Dublin 15.

Planning Authority

Fingal County Council.

Planning Authority VSL Reg. Ref.

VS/0016.

Site Owner

Glenveagh Homes Limited.

Inspector

Daire McDevitt.

1.0 Introduction

The landowner has submitted an appeal to the Board, against the Demand for Payment for the year 2022. The grounds of appeal apply to 3 cases before the Board VS0016 refers to current appeal, VS 0017 refers to ABP 318369-23 and VS 0018 refers to ABP 318371-23 which apply to the appellant landholding at Church Road, Tyrrelstown, Hollystown, Dublin 15 which the planning authority assessed as 3 separate sites.

This appeal refers to a Section 15 Notice of Demand for Payment of Vacant Site Levy issued by Fingal County Council, stating their demand for a vacant site levy for the year 2022 amounting to €350,000 for vacant site at Lands west of the R121 Church Road, Kilmartin, Tyrrelstown, townland of Hollystown, Dublin 15 and identified as VS-0016.

The appeal site has one stated registered owner Glenveagh Homes Limited and refers to the company secretary and seven other named associates.

A Notice of Proposed Entry on the Vacant Sites Register was issued to Bardus Limited on the 16 November 2017. On the 28 December 2017, the Notice of Entry on the Vacant Sites Register was issued to Bardus Limited. This section 7(3) notice was appealed to the Board on the 29 January 2018. On the 18 June 2018, the Board confirmed the notice and determined that the site is a vacant site within the meaning of the Act. A section 11(1) Notice to Owner of Site Entered on Vacant Sites Register and Levy to be Charged was issued to Tom O'Brien (receiver of Bardus Limited) on the 31 May 2018.

A valuation pertaining to the site was issued by Fingal County Council on the 27 April 2018. The value of the subject site is stated to be €5,000,000.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Glenveagh Homes (addressed to the company secretary and seven other named associates) on the 19 February 2020 for the value of €350,000 for the year 2019. Confirmed on appeal under ABP306959-20.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Glenveagh Homes (addressed to the company secretary and seven other named associates) on the 24 February 2021 for the value of €350,000 for the year 2019.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Glenveagh Homes (addressed to the company secretary and seven other named associates) on the 12 November 2021 for the value of €350,000 for the year 2020. This was not appealed.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Glenveagh Homes (addressed to the company secretary and seven other named associates) on the 3 March 2022 for the value of €350,000 for the year 2020.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Glenveagh Homes (addressed to the company secretary and seven other named associates) on the 14 December 2022 for the value of €350,000 for the year 2021.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Glenveagh Homes (addressed to the company secretary and seven other named associates) on the 19 April 2023 for the value of €350,000 for the year 2021.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Glenveagh Homes (addressed to the company secretary and seven other named associates) on the 5 October 2023 for the value of €350,000 for the year 2022. The appellant (Glenveagh Homes Limited) appealed the Demand for Payment Notice issued pursuant to Section 15 of the Urban Regeneration and Housing Act and this forms the current appeal before the Board.

2.0 Site Location and Description

The portion of the lands identified as VS0016 are located north of Mulhuddart in the emerging Tyrrelstown/Kilmartin area of Dublin 15. The site is positioned north of a large area of public parkland, Tyrrelstown Park. A school is located to the south east of the site and Hollystown Golf Club is to the north east. A large arable field is located to the west of the site.

3.0 Statutory Context

3.1 Urban Regeneration and Housing Act 2015 (as amended).

The site was entered onto the register subsequent to a Notice issued under Section 7(1) of the Act that stated the PA was of the opinion that the site referenced was a vacant site within the meaning of Section 5(1)(a) of the Act. A section 7(3) Notice was issued 28 December 2017 and the site was subsequently entered onto the register on that date.

Section 5(1) of the act says –

1) In this Part, a site is a vacant site if—

(a) in the case of a site consisting of residential land—

i) the site is situated in an area in which there is a need for housing

ii) the site is suitable for the provision of housing, and

iii) the site, or the majority of the site, is -

(I) vacant or idle, or

(II) being used for a purpose that does not consist solely or primarily of the provision of housing or the development of the site for the purpose of such provision.....

Section 6(5) of the act says –

A planning authority, or the Board on appeal, shall determine whether or not a site was suitable for the provision of housing for the purposes of this Part by reference to—

(a) the core strategy

b) whether the site was served by the public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) necessary to enable housing to be provided and serviced, and

(c) whether there was any thing affecting the physical condition of the land comprising the site which might affect the provision of housing

Section 18 of the Act states that the owner of a site who receives a demand for payment of a vacant site levy under section 15, may appeal against the demand to the Board within 28 days. Section 18(3) of the act says –

Where the Board determines that a site was no longer a vacant site on 1 January in the year concerned, or is no longer a vacant site on the date on which the appeal under this section is made, it shall give written notice to the planning authority who shall cancel the entry on the register in respect of that site and shall cancel the demand made in respect of that year.

Subsections set the detail and exceptions in relation to change of ownership.

4.0 Development Plan

The Fingal Development Plan 2023 – 2029 was made on 22nd February 2023 and came into effect on 5th April 2023.

Lands are zoned RA Residential.

5.0 Planning History

Subject site VSL History

ABP-300786-18 - Vacant Site Levy - Appeal S.9. Notice Confirmed on the 18 June 2018 because of the need for housing in the area, the suitability of the site for the provision of housing as demonstrated by the phasing strategy set out in the Kilmartin Local Area Plan 2013, the fact that any constraints to the development of the site are considered to be within the control of the appellant to address and the insufficient reason put forward to cancel entry on the Vacant Sites Register.

ABP 306959-20 refers to section 18 appeal. Notices confirmed.

Nearby sites:

PA ref: **FW13A/0088** and An Bord Pleanála reference **PL06F.243395**. 177 dwellings with a new link road to the east of Tyrrelstown Educate Together School. October 2014.

SHD:

An Bord Pleanála reference **ABP-303956-19**. Permission refused for the removal of 2 existing sheds and a silo. Change of use of golf course to residential and open space to consist of 133 no. houses, 120 no. apartments and associated site works. June 2019.

PA ref: **FW13A/0088** and An Bord Pleanála reference **PL06F.243395**. 177 dwellings with a new link road to the east of Tyrrelstown Educate Together School. October 2014.

PA Ref.FW21A/0042 refers to a grant of permission for 69 residential units.

SHD:

An Bord Pleanála reference **ABP-303956-19**. Permission refused for the removal of 2 existing sheds and a silo. Change of use of golf course to residential and open space to consist of 133 no. houses, 120 no. apartments and associated site works. June 2019.

An Bord Pleanála reference **ABP-312271- refers to a 2023 grant of permission for** the removal of 2 existing sheds and construction of 548 residential units, 2 creches and associated developments.

LRD:

PA Ref LRD0024/**S3** refers to an October 2023 grant of permission for LRD for 580 residential units and associated developments.

6.0 Planning Authority Decision

6.1 Register of Vacant Sites Report:

First report - Site is zoned 'RA – Residential Area'. There is no planning history associated with the site. No recorded enforcement history. The site is zoned for housing, house and rental prices are detailed, 4,807 applicants on social housing support have detailed Blanchardstown as their preferred area, the proportion of houses for sale/rent is less than 5%; there is a need for housing. The connection of services will be required through other land in the ownership of the landowner. There are no constraints in the Kilmartin LAP to preclude development. The site was vacant or idle for the twelve months concerned. The report includes a detailed criteria assessed for suitability for the VSR and detailed responses in relation to the

entirety of section 5(1)(a) and section 6(4) and (5) of the 2015 Act. The Council's report is accompanied by maps, photographs, a housing waiting list assessment by area, an urban house count survey for the area (2016), a monthly rent report (2014-2017) and a 12 month market based household purchase report (2014-2017).

A second report was also prepared in relation to the submissions received on foot of the section 7(1) Notice, despite Council receipt of the submission after the closing date for submissions.

A letter issued to the landowner to inform them that due to a change in ownership, there would be a zero charge for 2018.

A Chief Executive's Order generated on the 19 February 2020; a section 15 Demand Notice followed.

6.2 Planning Authority Notices:

Fingal County Council advised the site owner that the subject site (Planning Authority site ref. VS0017) is now liable for a payment of 7% of its valuation and hence the levy for 2022 is €350,000.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Glenveagh Homes (addressed to the company secretary and seven other named associates) on the 5 October 2023 for the value of €350,000 for the year 2022.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Glenveagh Homes (addressed to the company secretary and seven other named associates) on the 19 April 2023 for the value of €350,000 for the year 2021.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Glenveagh Homes (addressed to the company secretary and seven other named associates) on the 14 December 2022 for the value of €350,000 for the year 2021.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Glenveagh Homes (addressed to the company secretary and seven other named associates) on the 3 March 2022 for the value of €350,000 for the year 2020.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Glenveagh Homes (addressed to the company secretary and seven other named associates) on the 12 November 2021 for the value of €350,000 for the year 2020. This was not appealed.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Glenveagh Homes (addressed to the company secretary and seven other named associates) on the 24 February 2021 for the value of €350,000 for the year 2019.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Glenveagh Homes (addressed to the company secretary and seven other named associates) on the 19 February 2020 for the value of €350,000 for the year 2019. Confirmed on appeal under ABP306958-20.

Correspondence addressed to Glenveagh Homes dated 21 December 2018 issued by Fingal County Council stated that following a change of ownership a zero charge would refer to the year 2018.

A Notice of Determination of Market Value was issued Tom O'Brien Receiver of Hasak Limited on the 31 May 2018 stating that the valuation placed on the site is €5,000,000 (five million euro). No evidence from the appellant has been submitted to show that this valuation was appealed to the Valuation Tribunal.

A section 11(1) Notice to Owner of Site Entered on Vacant Sites Register and Levy to be Charged was issued to Tom O'Brien (receiver of Bardus Limited) on the 31 May 2018.

A section 7(3) Notice issued on the 28 December 2017, advising the owner that their site had been placed on the register.

A section 7(1) Notice issued on the 16 November 2017, advising the owner that their site had been identified as a vacant site and invited submissions, accompanied by a site map.

The planning authority highlighted in their submission that levies for 2019, 2020, 2021 subject to reminder notices as outlined above.

7.0 The Appeal

7.1 Grounds of Appeal

The landowner has submitted an appeal to the Board, against the Demand for Payment for the year 2022. The grounds of appeal apply to 3 cases before the Board (VS0016, VS 0017 and VS 0018) which apply to the appellant landholding at Church Road, Tyrrelstown, Hollystown, Dublin 15 which the planning authority assessed as 3 separate sites. The grounds appeal can be summarised as follows:

It is submitted that the site is not a 'vacant site' because during the year 2022, it was used for the development of the site for the purpose of the 'provision of housing'.

- Permission granted under FCC Ref. FW21A/0042 for 69 houses on lands to the east of the site, permission included the construction of a new foul sewer (c.0.97ha, 3km in length) to connect to the existing c.600mm diameter foul sewer to the south of Powerstown Road.
- The new sewer is necessary to serve the property with public infrastructure and facilities necessary to enable housing to be provided and serviced, within the meaning of section 6(5) of the Act. It traverses each of the separate sites on the register VS0016, VS 0017 and VS0018.
- Commencement notice (CN0085831FL) dated 28 January 2022 gave notice to implement permission from 3 February 2022.
- Therefore no demand for 2022 can be made as the property was in use for the development of the site for the purpose of the provision of housing.
Property used for the construction of new foul sewer to serve the property to enable housing to be provided and served.

The site is not a 'vacant site' because , at the date of appeal, it is being used for the 'provision of housing.'

- ABP under ABP 312271-21 granted permission on the 23 March 2023 for SHD comprising 548 homes on property to the northeast of the 2021 permission known as 'Hollystown SHD'.
- 10 no. commencement notices between 2 August 2023 and 6 September 2023 gave notice of implementation of that permission.

- Works on the 548 homes has commenced and on the date of the appeal was ongoing.
- SHD lands include VS0016 and VS0017 but excludes VS0018.
- It is submitted that the appellants would suffer prejudice if the activation of the property for the provision of housing on the parts within VS0016 and VS0017 was ignored when assessing the appeal against the demand for VS0018.
- The lands the subject of 3 VSLs (VS0016, VS0017 and VS0018) should be treated as a single landholding site and determined as such.
- There is no doubt that by 1 November 2023 the property no longer satisfies the test under 5(1)(a) and the demand should be cancelled.

Without prejudice to the foregoing, the site is not a 'vacant site' because during the year 2022, the site was not served by the public infrastructure and facilities necessary to enable housing to be provided and serviced.

- A foul sewer was required to serve the site to enable housing to be provided and serviced. The development of that sewer commenced during 2022. Therefore during 2022, absent this new sewer, it was not, in fact, serviced. As the public infrastructure and facilities necessary to enable housing to be provided were not installed.
- Section 6(5)(b) applies and, in consequence, that paragraph (1)(a)(ii) of the legal definition of 'vacant site' is not satisfied and demand should be cancelled.

The Notice of demand includes a legal error.

- The Notices cite the levy for the year 2022 recites that the sites have been recorded on the register for 1 January 2022. This could only be relevant to a demand for the year 2021, These are not demands for the year 2021 as they are stated in express terms to be demands for the year 2022.
- The demand is wrongly made and should be cancelled.

Documentation submitted with the appeal include inter alia copies of:

- Demand for payment notices for VS0016, VS0017 and VS0018.

- Final grant of permission dated 24 August 2022 (Council Reference No. FW21A/0042).
- Permission for SHD known as 'Hollystown SHD' (Board Ref. ABP 312271-22)

7.2 Planning Authority Response

Response received 13th December 2023 refers to the three VSLs sites (VS0016, VS0017 and VS0018), comments are summarised as follows:

- The planning authority held the view that given the extent of the landholding division was required into multiple site for VSL as no guarantee that development on one part of the lands would result in the overall landholding being developed.
- The planning authority submits that vs0016, VS0017 and VS0018 were not the subject of permitted development and that permission was granted for SHD in March 2023. SHD relates to VS0016 and part of VS0017 therefore vacant in 2022.
- Commencement notices lodged.
- LRD permitted on VS0017 and VS0018 on 24 October 2023. Section 18(3) refers to ABP and not the role of the PA to comment.

8.0 Assessment

8.1 Introduction

The Board should note that two other concurrent appeals run alongside this case, reference numbers ABP-318369-23 and ABP-306371-23 refer. I am of the view, given the context of the land holding that they cannot be considered in isolation and while three separate reports are prepared they broadly address the same issues.

This appeal relates to a Section 15 Demand for Payment. In accordance with the provisions of the legislation there are 2 key criteria to consider:

- (a) the site was no longer a vacant site on 1st January in the year concerned, or
- (b) the amount of the levy has been incorrectly calculated in respect of the site by the Planning Authority.

I will consider each of these in turn.

8.2 The site is no longer vacant

The Board should be aware that the provisions of Section 18(2) of the Act does not specify whether the applicant must demonstrate whether the site constitutes a vacant site as per the provisions of Section 5(1)(a) or 5(1)(b) i.e. that the site constituted a vacant site in the first instance when the Section 7(3) Notice was issued or whether they must just demonstrate that notwithstanding the Notice issued, that development has taken place on the site and it is no longer vacant as of the 1st of January in the year concerned, in this case 2022.

8.3 Is it a Vacant Site?

A Section 7(3) Notice of Entry on the Vacant Sites Register was issued on the 26th February 2021. A assessment was carried out by the planning authority as to whether the site constituted a vacant site under section 5(1)(a). Following an assessment the site was placed on the register, these matters have not changed.

The appellants dispute that site continues to be vacant at the time of appeal as provision of sewer which traverses the site commenced.

The planning authority were correct to issue the demand for payment of the levy for 2019, 2020, 2021 and 2022 based on the vacancy of the site on 1st January of the relevant years. Nevertheless, while the planning authority's demand was correctly based on the circumstances of the site on 1st January 2022 section 18(3) requires the board to also consider the vacant status of the site on the date an appeal is made, which in this case was 1st November 2023.

Permission granted under FCC Ref. FW21A/0042 for 69 houses on lands to the east of the site, permission included the construction of a new foul sewer (c.0.97ha, 3km in length) to connect to the existing c.600mm diameter foul sewer to the south of Powerstown Road. The new sewer is necessary to serve the property with public infrastructure and facilities necessary to enable housing to be provided and serviced, and traverses each of the separate sites on the register VS0016, VS 0017 and VS0018. Commencement notice (CN0085831FL) dated 28 January 2022 gave notice to implement permission from 3 February 2022. The appellant submitted that no demand for 2022 can be made as the property was in use for the construction of new foul sewer to serve the property to enable housing to be provided and served.'

Commencement Notices served between August and September 2023 gave notice of implementation of permission ABP 312271-21 (SHD).

As such the lands the subject of 3 VSLs (VS0016 current appeal), VS0017 (ABP 318369-23) and VS0018 (ABP 318371-23)) should be treated as a single landholding site and determined as such.

As set out above I am of the view that the concurrent appeals pertaining to VS0016, VS0017 and VS0018 need to be considered in tandem As permitted SHD and LRD schemes on the Glenveagh Homes Limited lands at this location considered the overall development. In this context as the sites are codependent and the provision of a sewer to serve the permitted residential development traverses VS0016, VS0017 or permitted development include portions of same (VS0017, VS0018). I consider that the site ceased to be a vacant site when housing development began upon it pursuant to commencement notices submitted in relation to the permissions granted under Reg. Ref. FW21A/0042

Construction activity on foot of Commencement Notice of implementation of permission FW21A/0042 from the 3rd February 2022 and Commencement Notice of implementation of permission ABP312271-21 from the 2nd February 2023 on foot of meant that, at the time at the time the appeal was made (1st November 2023), the site was being used for the development of housing on the wider landholding as the three VSL appeals before the Board (ABP 318368-23, ABP 318369-23 and ABP 318371-23) in my opinion cannot be considered in isolation as all pertain to the same landholding in the appellants ownership at this location and so was not vacant according to section 5 (iii)(II) of the act made. Therefore, having regard to the foregoing the board should cancel the demand for payment for 2022 in accordance with section 18(3) of the Act.

8.4 Levy Calculation

A Notice of Determination of Market Value was issued to Tom O'Brien Receiver of Bardus Limited on the 31 May 2018 stating that the valuation placed on the site is €5,000,000 (five million euro). No evidence from the appellant has been submitted to show that this valuation was appealed to the Valuation Tribunal.

Correspondence addressed to Glenveagh Homes dated 21 December 2018 issued by Fingal County Council stated that following a change of ownership a zero charge would refer to the year 2018.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Glenveagh Homes (addressed to the company secretary and seven other named associates) on the 19 February 2020 for the value of €350,000 for the year 2019. Confirmed on appeal under ABP306959-20.

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A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Glenveagh Homes (addressed to the company secretary and seven other named associates) on the 5 October 2023 for the value of €350,000 for the year 2022. Current appeal.

The rate of levy was increased from 3% to 7% of the market valuation of relevant sites with effect from January 2020, to be applied in respect of sites that were included on vacant site registers in 2019. The levy rate applicable in this instance is 7% and it is evident, therefore, that the levy calculation has been correctly calculated.

8.5 Procedural Matters

The appellant has submitted that the Demand for Payment Notices cite the levy for the year 2022 and cites that the sites have been recorded on the register for 1 January 2022.

Section 18(3) refers states “Where the board determines that a site is no longer a vacant site in the year concerns...”

I note the appellants argument regarding the language used and what they perceive to be ‘imprecise’. As reference to 1 January 2022 could only be relevant to a demand for the year 2021, These are not demands for the year 2021 as they are stated in express terms to be demands for the year 2022. As such it is submitted that the demand is wrongly made and should be cancelled.

I have reviewed the Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Glenveagh Homes (addressed to the company secretary and seven other named associates) on the 5th October 2023 for the value of €350,000 states “The levy to be charged for 2023 in respect of the year 2022” for the year 2022 also states “I refer to the abovementioned site where entry on the Vacant Site Register has been recorded for 1st January 2022....” I have reviewed the legislation and note the appellant’s argument, however I am of the view that the year concerned is 2022 and reference to 1 January 2022 is correct and in accordance with the provisions of section 18(3).

9.0 Recommendation

I recommend that in accordance with Section 18 (3) of the Urban Regeneration and Housing Act 2015 (as amended), the Board should confirm that the site was a vacant site as of the 1st of January 2022 but was not a vacant site on 1st November 2023,

the date on which the appeal was made and should therefore cancel the demand for payment of the levy for 2022.

10.0 Reasons and Considerations

Having regard to:

- (a) The information placed before the Board by the Planning Authority in relation to the entry of the site on the Vacant Sites Register, the issuing of the demand for payment for 2022, and the submission on 1st November 2023 of commencement notices for the development of housing on the site permitted under Reg. Ref. FW21A/0042 and ABP 312271-21.
- (b) The grounds of appeal submitted by the appellant,
- (c) The report of the Planning Inspector,

The board concluded that the site was being used for the development of housing on the date the appeal was made and so was no longer a vacant site according to Part 2) of the Urban Regeneration and Housing Act 2015, as amended.

The demand for payment of the vacant site levy issued by the planning authority in respect of the site for 2022 under section 15 of the Urban Regeneration and Housing Act 2015, as amended, is, therefore, cancelled.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Dáire McDevitt

Senior Planning Inspector

3rd March 2024